

**United States Department of Labor
Employees' Compensation Appeals Board**

A.K., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Swedesboro, NJ, Employer**

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**Docket No. 08-710
Issued: August 8, 2008**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 31, 2007 appellant filed a timely appeal from the merit decision of the Office of Workers' Compensation Programs dated November 19, 2007 denying her claim for a recurrence of disability. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction to review the merits of this case.

ISSUE

The issue is whether appellant established a recurrence of disability causally related to the accepted injury commencing August 14, 2007.

FACTUAL HISTORY

On March 6, 2007 appellant, then a 43-year-old mail handler, filed an occupational disease claim alleging that she hurt herself after many years of "the way I do my work." She indicated that she first became aware of the disease or illness on February 28, 2007.

In an attending physician's report dated March 23, 2004, Dr. Judith Riley-Lowe, an osteopath, noted that appellant's lifting boxes irritated her tendon; she diagnosed tendinitis. She

indicated that appellant was totally disabled from February 28 through March 23, 2007 and able to return to light-duty work on March 24, 2007. In a medical report dated April 2, 2007, Dr. Mark K. Levitsky, a Board-certified orthopedic surgeon, indicated that appellant could return to full duty on April 9, 2007.

By letter dated April 30, 2007, the Office accepted appellant's claim for tendinitis, right elbow.

On May 16, 2007 appellant filed a claim for compensation for the period February 28 through April 9, 2007. She submitted time analysis forms for this time period indicating that she missed time because "arm was hurting." The employing establishment submitted an absence analysis on appellant indicating that she was absent from work for intermittent periods from February 28 through April 13, 2007. Appellant was paid compensation for intermittent wage loss from February 28 through April 8, 2007. She returned to work on April 9, 2007.

In a form indicating treatment on August 8, 2007, a person with an illegible signature from Riverfront Medical Center indicated that appellant had pain and numbness in her right elbow and wrist and referred her for nerve conduction studies and x-rays. This person stated that appellant should not lift or pull over 10 pounds with her right hand and perform no repetitive motion with the right hand. Dr. Riley-Lowe referred appellant to physical therapy.

On August 14, 2007 appellant filed a notice of recurrence, alleging a recurrence of disability on February 28, 2007. She stated, "After original injury unable to sustain 40 hours per week or 8 hours a day due to discomfort. The employing establishment indicated that, after appellant's prognosis of injury, restrictions were accommodated. The employing establishment further indicated that the date appellant stopped work after the recurrence was August 14, 2007. However, the employing establishment later amended this to indicate that appellant stopped work on April 13, 2007.

On October 15, 2007 appellant filed a claim for compensation for the period August 7 to September 7, 2007. In further support of her claim, she submitted time analysis forms showing leave without pay for this time period.

In a progress note dated August 8, 2007, a physician whose signature is illegible indicated that appellant had pain and numbness in her right elbow and wrist. On that same date, the same physician limited appellant's lifting with right hand to 10 pounds and indicated that she was to do no repetitive motion with right hand. On August 15, 2007 this physician limited appellant to no lifting in right hand over 10 pounds and no repetitive motion with right hand.

By letter dated September 28, 2007, the Office asked appellant to submit further information with regard to his request for recurrence of disability.

In an October 5, 2007 note, Dr. Riley-Lowe indicated that she had examined appellant on August 13 and 23 and October 5, 2007. She diagnosed appellant with pain in right wrist and elbow, carpal tunnel and tendinitis. Dr. Riley-Lowe noted that appellant was to remain off work from August 13 to October 9, 2007.

By decision dated November 19, 2007, the Office denied appellant's request for recurrence of disability commencing August 14, 2007.

LEGAL PRECEDENT

A recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition, which resulted from a previous injury or illness without an intervening injury or new exposure to the work-environment that caused the illness.¹ This term also means an inability to work when a light-duty assignment made specifically to accommodate an employee's physical limitations due to her work-related injury or illness is withdrawn (except when such withdrawal occurs for reasons of misconduct, nonperformance of job duties or a reduction-in-force) or when the physical requirements of such an assignment are altered so that they exceed her established physical limitations.² Moreover, when the claimed recurrence of disability follows a return to light-duty work, the employee may satisfy her burden of proof by showing a change in the nature and extent of the injury-related condition such that she was no longer able to perform the light-duty assignment.³

Where an employee claims a recurrence of disability due to an accepted employment-related injury, she has the burden of establishing that the recurrence of disability is causally related to the original injury.⁴ This burden includes the necessity of furnishing evidence from a qualified physician who concludes, on the basis of a complete and accurate factual and medical history, that the condition is causally related to the employment injury.⁵ The medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated or aggravated by the accepted injury.⁶

ANALYSIS

Appellant's claim was accepted for tendinitis of the right elbow and she was paid compensation through April 8, 2007. She returned to limited-duty work on April 9, 2007. Appellant filed a claim for recurrence of disability. In its November 19, 2007 decision, the Office denied appellant's request for recurrence of disability commencing August 14, 2007.

The Board finds that the Office properly found that appellant had not established a recurrence of disability commencing August 14, 2007. There is no evidence that the employing establishment has withdrawn the limited-duty position. Furthermore, the Board finds appellant has not provided a medical rationalized opinion from a physician who, on the basis of a complete

¹ 20 C.F.R. § 10.5(x).

² *Id.*

³ *Theresa L. Andrews*, 55 ECAB 719, 722 (2004).

⁴ 20 C.F.R. § 10.104(b); *Carmen Gould*, 50 ECAB 504 (1999); *Helen K. Holt*, 50 ECAB 279, 382 (1999); *Robert H. St. Onge*, 43 ECAB 1169 (1992).

⁵ See *Helen K. Holt*, *supra* note 4.

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.2 (June 1995).

and accurate factual and medical history, concluded that she had a recurrence of disability causally related to the employment injury and supported that conclusion with sound medical reasoning.⁷ Although Dr. Riley-Lowe indicated that she examined appellant on August 13 and 23 and October 5, 2007, she diagnosed appellant with pain in right wrist and elbow, carpal tunnel and tendinitis and noted that she was to remain off work from August 13 through October 9, 2007, she failed to provide an explanation as to whether this was a change in the nature and extent of the injury-related condition to such an extent that appellant was unable to perform her light-duty assignment. In fact, her brief note did not constitute rationalized medical evidence as it does not contain a complete and accurate factual and medical history nor does she provide a complete medical explanation as to how she reached her conclusion. It is well established that medical reports must be based on a complete and accurate factual and medical background, and medical opinions based on an incomplete or inaccurate history are of little probative value. The medical notes from Riverfront Medical Center dated August 8 through 15, 2007 are also insufficient to establish a recurrence of disability on or about August 14, 2007. These brief notes and forms indicate that appellant had work limitations; however, the notes never indicate that appellant could not perform her light-duty work, nor do these notes indicate that her condition had worsened. Furthermore, these notes are not entitled to any weight as they do not contain a legible signature by a physician.

Accordingly, the Board finds that appellant has not submitted sufficient rationalized medical evidence to establish a spontaneous change in her accepted conditions preventing her from being able to perform her light-duty position. Furthermore, appellant has not shown a change in the nature and extent of the light-duty job requirements.⁸

CONCLUSION

The Board finds that appellant failed to establish a recurrence of disability causally related to the accepted injury commencing August 14, 2007.

⁷ See *Helen K. Holt*, *supra* note 4.

⁸ The Board notes that it appears that appellant also claimed a recurrence of disability for intermittent periods between April and August 2007. However, as the Office's decision of November 19, 2007 only addresses the issue of disability after August 14, 2007, this is the only issue before the Board.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 19, 2007 is affirmed.

Issued: August 8, 2008
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board